

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

S.J.H, by his guardian and  
next friend Shannon A.  
Hensley; and SHANNON A.  
HENSLEY,

Plaintiffs,

v.

COLVILLE SCHOOL DISTRICT,

Defendant.

NO. CV-11-0260-EFS

**ORDER GRANTING THE DISTRICT'S  
MOTION TO DISMISS, GRANTING  
PLAINTIFFS' MOTION TO AMEND,  
AND DENYING WITH LEAVE TO  
RENEW PLAINTIFFS' MOTION TO  
APPOINT COUNSEL**

On July 8, 2011, Shannon Hensley filed a pro se two-page Complaint asserting a violation of the Individuals with Disabilities Education Act (IDEA), Individuals with Disabilities Improvement Act (IDEIA), the Rehabilitation Act, the Americans with Disabilities Act, and 42 U.S.C. § 1983 on behalf of herself and her minor son S. J. H. ("S.H.") because the Colville School District ("District") failed to implement court-ordered stay-put services. ECF No. [1](#). The District asks the Court to dismiss the Complaint because 1) minor S.H. may not litigate his claims without being represented by an attorney and 2) it fails to state a claim upon which relief can be granted, relying on Federal Rule of Civil Procedure 12(b)(6). ECF No. [3](#). Plaintiffs oppose the motion or, in the alternative, ask the Court to appoint legal counsel for S.H. and to allow leave to amend the Complaint: Plaintiffs also formalized these

1 alternative arguments in separate motions, ECF Nos. 7 & 8. After  
2 reviewing the submitted material<sup>1</sup> and relevant authority, the Court is  
3 fully informed. For the reasons given below, the Court denies with leave  
4 to renew Plaintiffs' Motion to Appoint Counsel, grants Plaintiffs' Motion  
5 to Amend Complaint, and grants the District's Motion to Dismiss.

6 First, the Court finds that S.H., as a minor child, must be  
7 represented by an attorney to prosecute any claim for damages on his own  
8 behalf. See *Ponce v. Clovis Unified Sch. Dist.*, No. 09-2142, 2010 WL  
9 843323 (E.D. Cal. Mar. 10, 2010) (dismissing the complaint and holding  
10 that two minor brothers, who were not pursuing relief by and through  
11 their parents, guardian ad litem, or counsel, did not have the capacity  
12 to sue pro se); *Johns v. Cnty. of San Diego*, 114 F.3d 874, 877 (9th Cir.  
13 1997) (noting "a parent or guardian cannot bring an action on behalf of  
14 a minor child without retaining a lawyer"). Because S.H. is a minor who  
15 is not represented by counsel, the Court dismisses any claim brought by  
16 S.H.: the District's motion is granted in part.

17 Plaintiffs ask the Court to appoint counsel for S.H. Before the  
18 Court will consider appointing an attorney for S.H., S.H. and/or his  
19 guardian(s) must take steps to find him legal assistance. The Court  
20 suggests contacting Coordinated Legal Education Advice and Referral  
21 center (CLEAR) (888-201-1014) or Gonzaga University Legal Services (509-

---

23 <sup>1</sup> The Court recognizes that the motions are not fully briefed;  
24 however, the Court is adequately informed to rule on these preliminary  
25 motions and believes the parties will be best served by the Court ruling  
26 at this time.

1 313-5791). Information about CLEAR and the Northwest Justice Project is  
2 available at [www.nwjustice.org](http://www.nwjustice.org); other legal information may be accessed  
3 online at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). Accordingly, S.H. is given leave  
4 to have counsel file an amended complaint on his behalf.

5 Although S.H. must be represented by counsel, Ms. Hensley may  
6 continue pro se if she wishes; the Court, however, recommends that she  
7 too take steps to find legal representation. The IDEA allows a parent  
8 to pursue relief under the IDEA in their own name. For instance, in  
9 *Winkelman ex rel. Winkelman v. Parma City School District*, 550 U.S. 516  
10 (2007), the Supreme Court recognized that parents of children who fall  
11 within the ambit of the IDEA have independently enforceable rights that  
12 "encompass the entitlement to a free appropriate public education for  
13 [their] child." *Id.* at 533. "[T]he statute confers those rights on the  
14 parents of disabled children as well as on the children themselves."  
15 *Blanchard v. Morton Sch. Dist.*, 509 F.3d 934, 936-37 (9th Cir. 2007).  
16 Thus, Ms. Hensley may seek the same IDEA remedies suing in her own  
17 capacity as S.J.H could if represented by counsel.

18 In summary, Ms. Hensley may pursue IDEA claims pro se, but S.H. may  
19 not unless he is represented by counsel. At this time, the Court will  
20 not comment upon whether Ms. Hensley may pursue claims under the  
21 Rehabilitation Act, the ADA, and 42 U.S.C. § 1983: analysis of those  
22 claims is deferred until Ms. Hensley files an amended complaint  
23 containing more factual allegations as is discussed below.

24 Second, the District is correct that the Complaint, and the proposed  
25 amended complaint, fail to state a claim upon which relief can be  
26 granted. The Complaint satisfies Rule 8(a)'s first and third

1 requirements: 1) it identifies the grounds for the Court's jurisdiction,  
2 and 3) it includes a demand for the relief sought. However, the  
3 Complaint fails to satisfy Rule 8(a)(2), which requires a "short and  
4 plain statement of the claim showing that the pleader is entitled to  
5 relief." Fed. R. Civ. P. 8(a)(2). This requirement is satisfied by the  
6 pleader alleging facts that plausibly give the pleader an entitlement to  
7 the demanded relief. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Applying  
8 this standard, it is insufficient that the Complaint alleges the District  
9 "failed to provide [S.H.] with court-ordered stay-put services through  
10 the course of litigation . . . ," ECF No. 1 at 2, or that "[t]he  
11 administrative law judge erred in granting the District's Motion for  
12 Summary Judgment," ECF No. 7-2 at 2. Rather, the Complaint must identify  
13 facts to support these conclusions, such as why S.H. is entitled to  
14 services under the IDEA, what services the District failed to provide,  
15 and when the District failed to provide the required services. Because  
16 leave to amend a complaint is to be freely given and the Court finds  
17 leave appropriate under the circumstances, the Court grants Plaintiffs  
18 leave to amend. Fed. R. Civ. P. 15(a).

19 In summary, if Plaintiffs choose to file an amended complaint  
20 asserting any cause of action by S.H., then the amended complaint must  
21 be filed by a lawyer. But if Ms. Hensley seeks to enforce her own rights  
22 under the IDEA and/or other causes of action, then she may file an  
23 amended complaint pro se. This amended complaint: 1) will operate as a  
24 complete substitute for (rather than a supplement to) the present  
25 Complaint, 2) must be legibly retyped in its entirety, 3) must be an  
26 original and not a copy, 4) must comply with both the Federal Rules of

1 Civil Procedure and the Local Rules for the Eastern District of  
2 Washington, see *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)  
3 (finding that *pro se* litigants must follow the same rules of procedure  
4 that govern other litigants), and 5) must set forth factual allegations  
5 in separate numbered paragraphs. When drafting the amended complaint,  
6 Ms. Hensley would be well served to abide by the "five Ws" (plus one H):  
7 who, what, where, when, why, and how. Ms. Hensley may contact the  
8 Clerk's Office to obtain a copy of the Local Rules. **A failure to file**  
9 **an amended complaint by December 19, 2011, as directed, will result in**  
10 **this lawsuit's dismissal.**

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. The District's Motion to Dismiss, **ECF No. 3**, is **GRANTED IN**  
13 **PART.**

14 2. Plaintiffs' Motion to Amend Complaint, **ECF No. 7**, **GRANTED.**

15 a. Ms. Hensley shall file an amended complaint no later than  
16 December 19, 2011.

17 b. Counsel may file an amended complaint on S.H.'s behalf no  
18 later than December 19, 2011.

19 3. Plaintiffs' Motion to Appoint Counsel, **ECF No. 8**, is **DENIED**  
20 with leave to renew.

21 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
22 this Order and send a copy to Plaintiffs and counsel.

23 **DATED** this 25<sup>th</sup> day of October 2011.

24  
25 S/ Edward F. Shea

EDWARD F. SHEA

United States District Judge

26 Q:\Civil\2011\0260.dismiss.amend.lcl.wpd